

*a***PUBLIC PROSECUTOR****v.****SEERALAN SUPPIAH**

SUPREME COURT, KUALA LUMPUR

SALLEH ABAS LP

b

WAN SULEIMAN SCJ

SYED AGIL BARAKBAH SCJ

[CRIMINAL APPLICATION NO. 21 OF 1984]

30 MARCH 1985

c

CRIMINAL LAW AND PROCEDURE: *Contempt of Court - Reference by Public Prosecutor on questions of law of public interest - Whether accusation of "biased, unfair and prejudiced" and refusal to leave Court when ordered to do so amounts to contempt - Right of summary punishment.*

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The respondent was holding a watching brief at an inquest. The Prosecuting Officer applied to invoke s. 193 of the Penal Code in respect of a witness. The respondent without asking the permission of the Court objected to this. The Magistrate reminded the respondent that he (the respondent) had no right to address the Court unless permitted to do so, whereupon the respondent made several allegations of bias against the Magistrate.

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The Magistrate ordered the respondent to leave the Court, but the respondent refused and continued with his allegations of bias against the bench adding that the bench was unfair and prejudiced against the witness and that he would apply to have another Magistrate to conduct the inquest.

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The Magistrate held the respondent for contempt and asked the respondent to show cause why he (the respondent) should not be punished. The respondent denied the charge and claimed to be tried before another Magistrate because the Magistrate being himself the complainant was biased. The Magistrate then fined the respondent RM150 or in default sentenced him to one week's imprisonment. Peh Swee Chin J, exercising his revisionary powers set aside the Magistrate's Order.

Held:*g*

[1] Counsel present at an inquest has no right to speak as of right, but can only do so with the permission of the Court.

[2] Although addressing the Court without permission is not a contempt it is certainly not polite to do so without permission.

[3] Counsel can plead for his client without fear or favour but has certainly no right to abuse the Court and interrupt proceedings.

[4] Allegations of bias, unfairness and prejudice would constitute contempt of Court.

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[5] The Magistrate is not required to record evidence in the form of questions and answers and the Court can go by the records to ascertain if there has been a contempt.

[6] Paragraph 26 of the Third Schedule of the Subordinate Courts Act confers on the Magistrate powers to take cognizance of any contempt of Court and to award punishment for the same to such extent and in such manner as may be prescribed by the Subordinate Courts Rules.

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[Learned Judge's order quashed. Magistrate's order restored.]

Cases referred to:

Re Kumaraendran [1975] 2 MLJ 45
Reece v. McKenna, ex parte Reece [1953] QSR 258
Maharaj v. AG for Trinidad and Tobago [1977] All ER 411
Qureshi v. Qureshi [1971] 2 WLR 518
PP v. Lee Ah Keh & Co. [1968] 1 MLJ 22

Legislation referred to:

Criminal Procedure Code, ss. 128(ii), 268
Penal Code, ss. 193, 228
Subordinate Courts Act 1948, 3rd Sch. para. 26
Subordinate Courts Rules 1950, O. XXXVIII, r. 1

Other source referred to:

Borrie and Lowe's Law of Contempt, 2nd Edn., p.30
For the appellant - Fong Seng Yee; DPP
For the respondent - N. Ramachandran; M/s. N. Ramachandran & Co.
Watching brief (for Bar Council) - Param Kumaraswamy

JUDGMENT**Salleh Abas LP:**

This Reference first came before us on 7 January 1985 but the hearing was postponed because of the absence of the respondent and his Counsel. In the meantime, Mr. Param Kumaraswamy on behalf of the Bar Council made an application to us to allow him to address us on the questions raised in the Reference after the parties have completed their submission. We granted this application. Now, the facts are as follows:

On 7 November 1984 the Magistrate, Port Dickson, Mr. N. Rajendran, was holding an Inquest (Inquest No. 47/1984). The respondent Mr. Seeralan, a member of the Bar was in Court holding a watching brief and conducting the inquest was Prosecuting Officer, Inspector Arvinder Singh.

During the course of the inquest, witness No. 8 became unduly difficult, whereupon Inspector Arvinder Singh informed the Court that he wished to bring to the attention of the witness the provisions of s. 193 of the Penal Code, presumably in order to impress upon the witness the importance of speaking the truth.

At this juncture, the respondent stood up and without seeking the permission of the Court objected to the course which the Prosecuting Officer intended to take and accused him and the Bench of unnecessarily tormenting the witness. He was reminded by the Magistrate that he had no right to address the Court unless permitted to do so; whereupon, the respondent became emotional and made several allegations of bias against the Magistrate. In order to continue the proceedings, the Magistrate ordered the respondent to leave the Court, but he refused to comply with the order saying that he had every right to be in Court. He continued to make allegations of bias against the Bench saying that the Bench was unfair and prejudiced against the witness, and that he would apply to have another Magistrate to hear the inquest.

As a result of this the Magistrate told the respondent that he was in contempt and informed the Prosecuting Officer that the respondent was then under arrest and was to be moved out from the Court. When the respondent refused to leave the Court, and said that he had to be carried away, the Court adjourned. Anyhow, on being informed by the Prosecuting Officer that the respondent was leaving for lunch and would be back at 2.00 p.m., the Magistrate agreed and allowed the respondent to leave for lunch.

a When the Court reassembled after lunch, the Magistrate invoked para. 26 of the Third Schedule of the Subordinate Courts Act 1948 and said that he took cognizance of the contempt committed by the respondent and informed him of his acts and statements which, in the opinion of the Magistrate, constituted a contempt and required him to show cause why he should not be punished. The acts and statements were:

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- (1) as he was only holding a watching brief in the matter, the respondent had to ask the Court's permission before addressing it, and he had not done so;
 - (2) he accused the Bench of being unfair and biased against witness No. 8;
 - (3) he refused to leave the Court when ordered to do so;
 - (4) by his continued unbecoming behaviour the respondent had disrupted the Court's proceedings.
- c**

He denied the charge and claimed to be tried before another Magistrate because the Magistrate being himself the complainant was therefore biased. As a result of that response the Magistrate then fined the respondent RM150 or in default one week's imprisonment. The respondent refused to pay the fine.

d The next day, 8 November 1984, Peh Swee Chin J of the Seremban High Court exercising his powers of revision reversed and set aside the Magistrate's order. The revisionary proceedings were held in his chambers in the presence of the Magistrate and Mr. Ramachandran. The DPP was not notified of the revision nor asked to be present at the revision proceedings although this officer was on that morning in Court waiting for the hearing of a number of criminal appeals.

e The Public Prosecutor now refers three questions to us which, in his opinion, are questions of law of public interest. These are:

- (1) Whether or not in law criminal contempt has been committed in the face of the Court by the respondent by accusing the presiding Magistrate in Port Dickson Magistrate's Court Inquest No. 47/1984 of being biased, unfair and prejudiced and by refusing to leave the Court when ordered to do so by the learned Magistrate;
 - f** (2) If the answer to question (1) is in the affirmative, then whether it is right in law for the learned Magistrate in the circumstances of this case to exercise his power of punishment for contempt of Court summarily;
 - (3) If the answer to question (2) is in the affirmative, then whether it is right in law for the learned Judge to set aside the Order of the learned Magistrate committing the respondent for contempt of Court in chambers without giving due notice or the right to be heard to the Public Prosecutor?
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The first question:

h Did the conduct and behaviour of the respondent constitute a contempt of Court? We agree with Mr. Param Kumaraswamy that merely to address the Court without getting its permission did not constitute a contempt, especially when the respondent in this case had the Court's indulgence to cross-examine practically every witness. The records show that he had cross-examined the first five witnesses, and refrained from so doing only as regards witnesses Nos. 6 and 7.

i An inquest is not like a trial. There are no parties to prosecute and to defend. It is only an inquiry by a Magistrate as to the cause of death and prosecuting officer is there not to prosecute anyone but only to assist the Court with the examination of witnesses for the purpose of giving

evidence. A defence Counsel present at an inquest is not there to defend anyone, but only to look after the interests of those who engage him. Whilst he has no right to speak as of right, this right seldom becomes an issue because the Court normally gives such indulgence whenever it is asked. However, although addressing the Court without permission is not a contempt it is certainly not polite to do so without permission. In polite circles such as the legal profession this simple etiquette is expected.

The gravity of the respondent's conduct lies in his continued accusations that the Court was "biased, unfair and prejudiced" against witness No. 8. This witness, as observed by the Court, was untruthful as she kept on giving evasive answers to straightforward questions. No one would doubt the propriety of Inspector Arvinder Singh's application to treat the witness as hostile and impeach her credit. Whilst the respondent's objection to the proposed course of action in order to protect the witness may not amount to a contempt, having been reminded that he had no right to make such objection as of right, he should not have made the situation more difficult by an allegation of bias against the Court. There is absolutely no justification for him to make the accusation. Whilst we accept that Counsel can plead for his client without fear and favour, he certainly has no right to abuse the Court and interrupt the proceedings. An allegation of bias, in our opinion, is not just a mere act of discourtesy, but a contempt of Court. (*Re Kumaraendran* [1975] 2 MLJ 45 and *Reece v. McKenna, ex parte Reece* [1953] QSR 258 at 624, cited in *Borrie and Lowe's Law of Contempt*, 2nd Edn., p.30).

Mr. Param Kumaraswamy submitted that as the Magistrate did not record the actual words spoken by the respondent, but only the substance of what he said, the respondent therefore could not be guilty of contempt. With respect, we have difficulty in accepting this submission especially when Mr. Param Kumaraswamy conceded that he did not challenge the accuracy and the *bona fides* of the record taken down by the Magistrate. Section 268 of the Criminal Procedure Code does not require evidence to be taken in the form of questions and answers, but in the form of narrative. This has been the law and the practice in this country for a long time. Unless the record taken down by the Magistrate is impugned, there is no way in which we could doubt the actual words uttered by the respondent. We can only go by the record.

The submission is an attempt to bring the case under reference within the scope of the Privy Council's decision in *Maharaj v. AG for Trinidad and Tobago* [1977] All ER 411 PC. In that case their Lordships held that an allegation that a Judge is guilty of "unjudicial conduct" is not a contempt of Court. The trial Judge took the allegation to be a "vicious attack on the integrity of the Court", but their Lordships were satisfied that there has been no such attack, and allowed the appellants appeal against his conviction. What *Maharaj's* case established is that the phrase "unjudicial conduct" does not amount to a vicious attack on the integrity of the Court. In any event, what vitiated the committal for contempt was the failure of the Trial Judge to make plain to the appellant the specific nature of the contempt with which he was being charged. Reverting to the case under reference, the words uttered by the respondent are not "unjudicial conduct" but "biased, unfair and prejudiced" and, therefore, in our opinion, constitutes a contempt of Court.

Now, what does the record disclose? In our view, the record clearly reveals the uncompromising attitude of the respondent and his unabashed arrogance and insolence towards the Magistrate. His continued accusations that the Court was biased, unfair and prejudiced clearly amount to a contempt of Court. This contempt had become all the more serious by his defiant attitude towards the Court. When asked to leave the Court, he refused, and when told that he was under arrest, he replied that he had to be carried away. The record shows that his abusive conduct had in fact interrupted the inquest proceedings which the Court should be concerned with and which,

- a* therefore, had to be postponed to another date (18 November 1984). Under such circumstances what else could the Magistrate do in order to restore the dignity of the Court and bring order to it? We are of the view that it was correct and proper for him to invoke para. 26 of the Third Schedule to the Subordinate Courts Act to deal with the situation. But this legitimate step was only met by continued defiance of the respondent who kept on repeating the same allegations of bias against the Magistrate, saying that he would show cause only before another Magistrate.
- b* He showed absolutely no remorse or regret over what had happened.

In our view, such conduct and behaviour was not just a disorderly act, nor a mere use of unbecoming language. They constituted a contempt of Court of a serious kind, i.e. without any mitigating factor.

The second question:

- c* Many cases of contempt of Court have been reversed because of the failure of the Court to give the contemnor an opportunity of being heard before he is punished. *Re Kumaraendran (supra)* and *Maharaj v. AG for Trinidad and Tobago (supra)*. In the case under reference the record clearly shows that the elements of contempt were fully set out and that the contemnor was asked to show cause. He did not attempt to reply to the charge but instead demanded that another Magistrate should hear it. Now, because his demand was not acceded to, his Counsel Mr.
- d* Ramachandran submitted that the Magistrate had no power to deal with the matter.

- e* This subsection is based on the consideration that the contempt in this case is also an offence under s. 228 of the Penal Code; it being an offence of intentional insult or interruption to a Magistrate sitting in a judicial proceeding. Under s. 128(ii) of the CPC the Magistrate who takes cognizance of an offence upon his own knowledge or suspicion cannot try the offender if the latter objects to the case being tried by him. In that event, the case should be either tried by another Magistrate or be committed for trial before the High Court. Thus, since the respondent objected to be tried by the same Magistrate, the subsequent contempt proceedings must be held to be null and void. Further, although under s. 353 of the CPC any offence under the Penal Code could be taken cognizance of and proceeded with by the Magistrate in whose view or in whose presence the offence was committed, nevertheless under s. 359 of the CPC the same Magistrate cannot try it. So goes the submission on behalf of the respondent.
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- g* The answer to this submission is that the learned Magistrate did not act under s. 353 of the CPC. Even if he had done so and despite the fact that the procedure under this section is by way of analogy applicable to the power exercisable under para 26 of the Third Schedule of the Subordinate Courts Act, we cannot accept the submission. Both ss. 128 and 359 of the CPC do not affect the operation of s. 353. It is clear from the provision of s. 128 itself that this section is made "subject to the provisions of this Code" and surely s. 353 is one of the provisions of the Code to which s. 128 is subject. Further, s. 359 clearly excludes s. 353 from its ambit by the phrase "Except as provided in ss. 353 and 357..." used in the section (s. 359 itself).

- h* In support of Mr. Ramachandran's submission, Mr. Param Cumaraswamy urged us to hold that once the respondent had required the contempt of Court to be dealt with by another Magistrate, the request should be granted; otherwise all subsequent proceedings would be held to be null and void. He quoted no authority. With respect, we cannot infer such a construction in para. 26 of the Third Schedule to the Subordinate Courts Act. If such a construction had been intended the legislature would have said so and would not have empowered the same Magistrate cognizance of any contempt of Court and to award punishment therefor. In our view, therefore, the fact that the contempt may also amount to an offence under s. 228 of the Penal Code does not in any way deprive the Magistrate of the power to punish for contempt. In this situation, the
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Magistrate has a choice of either proceeding under para. 26 of the Third Schedule to the Act or of authorizing a prosecution. This is clear from the last sentence of para. 26 itself, which says "If the contempt of Court is punishable as an offence under the Penal Code, the Court may, in lieu of taking cognizance thereof, authorize the prosecution."

There is one other matter which needs to be mentioned here. The Magistrate's power under para. 26 of the Third Schedule of the Subordinate Courts Act to take cognizance of any contempt of Court and to award punishment for the same is exercisable to "such extent and in such manner as may be prescribed by rules of Court". Order XXXVIII r. 1 of the Subordinate Courts Rules 1950 made provisions for the exercise of this power and Abdoolcader J (as he then was) held in *Re Kumaraendran* (*supra*) that the rule applied to a contempt of Court committed in the face of Court in respect of proceedings of a civil nature as well as or at best by analogy to those of a criminal nature because the rule is "a statutory crystallisation of an established principle of law". However, when the Subordinate Courts Rules 1980 came into effect replacing the 1950 Rules, the provisions of Order XXXVIII r. 1 of the 1950 Rules were not retained. There is, therefore, no provision in the present Subordinate Courts Rules regarding the exercise of this power by the Magistrate either in respect of civil proceedings or criminal proceedings. In our view the absence of such provision in the rules of Court does not mean that the power cannot be exercised. The Magistrate can effectively exercise the power so long as the contemnor is given an opportunity of being heard. For this purpose we refer to the principle enunciated by Sir Jocelyn Simon P. in *Qureshi v. Qureshi* [1971] 2 WLR 518 at 535 where he said:

... where a legislative authority by an enactment setting up a tribunal or other body envisages rules to be made governing the procedure of such tribunal or body, and no such rules are made, the tribunal or body is not necessarily thereby disabled from performing its function. In such case the tribunal or body acts effectively provided it acts in accordance with natural justice and to promote the objective with it was set up, and possibly by analogy with the rules of procedure prescribed for comparable tribunals or bodies.

In this context the guidelines provided for by Ali J (as he then was) in *PP v. Lee Ah Keh & Ors.* [1968] 1 MLJ 22 at 24, still stands.

The third question:

We do not think that it is necessary for us to deal with this question in view of our conclusions on questions 1 and 2.

We therefore reply to the three questions raised in this Reference as follows:

Questions 1 & 2:

The answers are in the affirmative.

Question 3:

No answer is necessary.

We, therefore, for the reasons given quash the learned Judge's order and restore the Magistrate's order.

Also found at [1985] 1 CLJ 524